



“Due Diligence” Questions and Answers

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The Offer to Purchase and Contract form (North Carolina Association of REALTORS®/North Carolina State Bar Association Form 2-T) defines “Due Diligence” under Terms and Definitions at Paragraph 1 (h) on the second page. An expanded explanation of the term and the effects of its use follow:

Q: What is “Due Diligence”?

A: “Due Diligence” is the buyer’s opportunity to engage in a process of further investigation of the property and the transaction as described in the Offer to Purchase form within a period of time agreed to by the seller and buyer.

Q: What might the buyer investigate during the “Due Diligence”?

A: The buyer will want to inquire about anything bearing on a decision to either move forward with the contract or terminate it. Paragraph 4 of Form 2-T outlines many, but not all, common considerations of the “Due Diligence” process such as home, pest, and septic inspections, property survey, appraisal, title search, loan qualification and application, repair negotiation, etc.

Q: How much time is allowed for the “Due Diligence” Process?

A: The amount of time is negotiable but the period begins with the effective date of the contract. Paragraph 1(j) of Form 2-T will state the period’s agreed upon ending date. Buyers should be certain to negotiate enough time to fully complete their inquiries - especially as related to appraisal and loan approval and any repairs discovered during property inspections.

Q: What is the “Due Diligence” Fee?

A: The fee, if any, is negotiated and paid by the buyer to the seller for the right to conduct “Due Diligence”. The amount of the fee may be influenced by such matters as the market for the property, number of days on the market, personal circumstances of buyer and seller, and the length of the “Due Diligence” period.

Q: Is there a limit to the repair items the buyer can ask the seller to perform?

A: No. The buyer is free to ask for any number of things; however, the seller is not obligated to agree to any of them. Repairs, if any, are completely negotiable.



Q: If the buyer is not satisfied with the seller's response, or lack thereof, to repair requests, what can the buyer do?

A: The buyer can terminate the contract or agree to move forward without the repairs.

Q: Must the repairs be completed by the seller before the end of the "Due Diligence" period?

A: No, but the seller is required to complete any repairs in a good and workmanlike manner prior to the settlement date. Failure by the seller to complete the repairs could result in breach of the contract. (See paragraph 8(k) and (l) of Form 2-T).

Q: Must the seller allow the buyer to inspect the property to verify the repairs have been completed even if the "Due Diligence" period has expired?

A: Yes. The buyer has the right to verify the repairs have been completed satisfactorily, during or after the "Due Diligence" period. The buyer also has the right to do a final walk-through. The seller's failure to permit the buyer to verify repairs or to do a final walk-through is a breach of the contract.

Q: What happens at the end of the "Due Diligence" period?

A: The buyer must make a decision to move forward with the contract or to terminate, so it's a good idea to discuss progress with the buyer as the end of the period approaches. There is a "Warning" to the buyer in paragraph 4 of Form 2-T advising termination if the seller does not agree to a requested extension of the "Due Diligence" period. The Buyer's loss of the right to terminate for any or no reason then places the earnest money at stake. To avoid any misunderstandings, provide an extension agreed to by the seller to the buyer in writing.

Q: If the buyer decides to terminate the contract under the "Due Diligence" clause, must the seller agree?

A: No. It is the buyer's sole decision to make, assuming it is made during the "Due Diligence" period and not afterward. The termination is a notification to the seller and must be in writing, but the buyer does not need the consent of the seller. It is a unilateral decision made by the buyer for any reason or no reason at all. The buyer typically gets back the earnest money but not the "Due Diligence" fee, unless otherwise negotiated.